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No. 79-1003

IN THE

Supreme Court of the United States

October Term, 1979

COUNTY OF IMPERIAL, CALIFORNIA and the SUPERIOR COURT OF CALIFORNIA in and for the COUNTY OF IMPERIAL,

Petitioners,

vs.

GUILLERMO GALLEGO MUNOZ, HUMBERTO MARTINEZ, JUAN DE LEON,

Respondents.

On Writ Certiorari to the United States Court of Appeals for the Ninth Circuit.

AMICUS CURIAE BRIEF.

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AMICUS CURIAE BRIEF.

STATEMENT OF THE CASE.

A Short History of Imperial County v. McDougal.

In 1967 W. ERLE SIMPSON owned the water well which is the subject of the current litigation. SIMPSON applied for a use permit to allow commercial sales of water from a well on the property. (*County of Imperial v. McDougal* (1977) 19 Cal. 3d 505, reprinted as Appendix "C" to the County's Petition for Writ of Certiorari and hereinafter referred to as *McDougal*).

The subdivision in which SIMPSON's land was located consisted of 16 10-acre parcels. Public hearings were held on SIMPSON'S application by the Planning Commission but were put over until a joint meeting of the Planning Commission and the Board of Supervisors could be held to formulate a "Water Exportation Policy" for the County. (McDougal, C-8).

That hearing was held in September of 1967 and members of both bodies expressed concern over the amount of water being exported from the county to Mexico. SIMPSON agreed to withdraw his request to sell water to Mexico and he was issued a permit for the commercial sale of water upon condition that "water not be sold for use outside Imperial County".

Although the County attempted later to claim that other considerations besides its "water export" policy were factors in the granting of the permit, the California Supreme Court rejected these contentions and held:

> "Under these circumstances, we must conclude that the limitation was intended to accomplish only what it clearly states, i.e. a prohibition against exporting water from the County." (*McDougal*, C-9),

SIMPSON did not challenge the permit, but abided by its conditions until he sold the well to McDOUGAL, in 1977.

Upon purchasing the well, McDOUGAL began to sell water to all purchasers without regard to where they intended to use it. Business increased substantially because of the need of Mexican water bottlers for the water.

In October of 1972, the County brought an action to restrain McDOUGAL from selling water to those who would use it outside of the County. In addition, the County claimed in separate causes of action that McDOUGAL's operation

was a public nuisance and that McDOUGAL was violating the County's ground water appropriation ordinance.

After evidence was presented, the trial court, ANDREW J. EYMAN, entered an order prohibiting McDOUGAL from violating the condition in his conditional use permit barring sale for export. In addition, Judge EYMAN found that McDOUGAL's operation violated a Zoning ordinance of the County and that the condition in the permit was designed to regulate local land use and had only an incidental effect on interstate and foreign commerce.

After vacating an opinion by an intermediate appellate court, the California Supreme Court granted a hearing.

The California Supreme Court rejected all of the findings of the trial court relating to the purpose of the condition in the use permit and its validity under the Commerce Clause. The Court upheld the restriction, however, on the narrow ground that since SIMPSON did not challenge the validity of the condition, McDOUGAL, standing in SIMPSON's shoes, could not do so either.

> "Thus, McDougal is estopped to assert that the prohibition in the Simpson permit against the sale of water for use outside the County is invalid, and he is bound by this limitation[3]." (*McDougal*, C-6).

In the above-mentioned footnote 3, the California Supreme Court explains that it has made no finding regarding whether the prohibition against the export of water was valid.

> "In view of this conclusion[,] we need not decide whether the prohibition against the export of water was valid. (See *City of Altus Oklahoma v. Carr* (W.D. Tex. 1966) 255 F. Supp. 828 . . ." (*McDougal*, C-6).

McDOUGAL's appeal to the U. S. Supreme Court was dismissed for lack of a substantial federal question. (434 U.S. 899).

The decision of the California Supreme Court also remanded the case to the trial court to make appropriate findings on the nuisance aspect of the case which had been considered moot on the first trial.

In conformance with the ruling of the California Supreme Court, McDOUGAL erected signs at the water well site proclaiming that water would henceforth only be sold to those who could prove that they would use the water in Imperial County.

On June 15, 1977, Mexican water buyers MUNOZ, MARTINEZ, and DE LEON approached the property tendering money to McDOUGAL for purchase of water. McDOUGAL requested that Mexican water buyers execute affidavits that stated they would use the water in Imperial County. They refused to do so. McDOUGAL then refused to sell water to them based upon the condition in his permit.

On June 19, 1977, the dissatisfied Mexican water buyers brought suit in Federal Court to enjoin enforcement of the unconstitutional condition. Reasoning that the California Supreme Court's judgment simply estopped McDOUGAL from challenging the condition, the Mexican buyers saw no reason why *they* should be estopped from challenging the unconstitutional condition in the case at bar.

On August 29, 1977, the Federal District Court issued a preliminary injunction enjoining the County of Imperial and its supervisors, and their agents and employees, from enforcing the condition in McDOUGAL's use permit which prohibits the sale of water for use outside Imperial County. (B-12).

McDOUGAL then proceeded to sell water to any purchasers regardless of where they intended to use it.

On May 1, 1978, the County requested that McDOUGAL be held in contempt in State Court for failure to abide by

the condition in his permit restricting his sales to those who would use the water in Imperial County. On March 5, 1979, the Imperial County trial court held McDOUGAL in contempt but stayed any sanctions until the final determination of the appeal in the Federal case. (D-3).

McDOUGAL filed a Writ of Certiorari challenging the contempt judgment with the California Court of Appeal, Fourth Appellate District, Division 1. That court has taken the Writ under submission and is awaiting a final determination of the federal appeal before it acts (Exhibit "A").

Pursuant to the California Supreme Court decision the County reinstituted the public nuisance portion of the State Court suit. On May 12, 1978, at the County's request, the trial court entered judgment on the nuisance cause of action based solely on the evidence taken at the original hearing five years before.

The California Court of Appeal reversed that judgment on the basis that new evidence should have been allowed concerning the current condition of the well.

The issue of public nuisance is now pending before the Superior Court of Imperial County.

I.

No Legitimate Land Use or Water Conservation Purposes Are Served by the Unconstitutional Condition in the Case at Bar.

The County, by reference to *Hudson County Water Co. v. McCarter* (1908) 209 U.S. 349, now implies that the purpose of the condition in the use permit limiting sales to those who would use the water in Imperial County is somehow related to the police power of the state to conserve water or regulate land use. (Petitioner's Brief, p. 30). This position has been clearly repudiated by the Supreme Court

of California in its reversal of the Trial Court's findings in *County of Imperial v. McDougal* (1977) 19 Cal. 3d 505.

Unlike the Mexican water purchasers in the case at bar, the County *was* a party to the McDOUGAL case and is bound by the concepts of collateral estoppel from challenging the findings of the California Supreme Court in *County of Imperial v. McDougal, supra.*

As the California Supreme Court noted, there is no limitation on the amount of water McDougal can sell and there is no limitation on the number of trucks aside from local nuisance laws. (McDOUGAL, C-8).

In other words, McDOUGAL is free to sell as much water as he wishes to anyone for commercial purposes so long as he does not sell it to those who would use it outside the County.

A recent study by the California State Water Resources Control Board shows that there is no danger to the water basin from McDOUGAL's pumping. Said study is attached hereto as Exhibit "B")

If water conservation and land use regulation are not the real purposes for the restriction, there remains only one logical explanation; the restriction is designed to prohibit water from being shipped to Mexico for other political purposes. *The County is attempting to write and enforce its own foreign policy towards Mexico.*

County of Imperial v. McDougal, supra, was originally filed by the County in 1972. At that time, relations between the United States and Mexico had been strained by the fact that the Wellton - Mohawk Project had increased the salt content of the water Mexico was receiving to unacceptable levels. Presidents Nixon and Echeverria resolved the problem, in part by agreeing that Mexico would receive 41,000

acre feet of water from above the Imperial Dam and 32,000 acre feet of water from Yuma Mesa Wells in Arizona.

These dislocations led to widespread resentment of the exportation of water to Mexico and have fueled the fires of the anti exportation movement.

Obviously, counties may not be allowed to interfere in the foreign relations of the United States with Mexico. The water involved here has become an international issue of some significance as evidenced by the Resolution of the Commission of the Californias, a governmental advisory group of Mexicans and Californians, calling for the continued exportation of water from McDOUGAL Wells. Said resolution is attached hereto as Exhibit "C".

II.

Hale v. Bimco Is Controlling in the Case at Bar.

Petitioner's argument that relief by the Federal District Court is barred by 22 U.S.C. 2283 is refuted by *Hale v. Bimco Trading Co., Inc.* (1939) 306 U.S. 375.

Although the Supreme Court of Florida in *Hale* actually ruled on the Federal issue involved while the California Supreme Court has sidestepped it, the factual situations are otherwise identical.

Petitioner claims that California Courts have not deferred to the Federal Courts on the issue involved as the Florida Courts did in *Hale*. This is not the case.

The California Supreme Court specifically refused to find whether or not the restriction in the permit was unconstitutional. (C-6).

The Trial Court specifically stayed all contempt proceedings pending the decision of this Court in the case at bar. (D-2).

The California Court of Appeal, Fourth Appellate District, Division 1, has also taken the issue of contempt under submission pending the outcome of the case at bar before the United States Supreme Court. See Order attached hereto as Exhibit "A".

In other words, every single level of the California Court system is awaiting the decision of this Court on the federal issue. There is no conflict whatsoever between the State and Federal Courts. No concepts of federalism are violated by the District Court injunction. The only party claiming to be injured by the injunction is the County of Imperial. The court system of California not only expects but is actually waiting upon a determination by the Federal Court of whether or not the condition is unconstitutional.

Hale v. Bimco is controlling and the Mexican water buyers should be allowed their day in Court.

III.

Barring the Injunction Below Would Only Defeat Diversity Jurisdiction Where It Is Clearly Necessary.

To this point in time a clearly unconstitutional condition has been allowed to stand despite persistent challenge by various parties for a period of eight years.

If the Mexican water buyers are forced to go into State Court because of the Court's interpretation of 22 U.S.C. 2283, this will accomplish only two goals. First, it will delay a determination of the constitutionality of the condition for a number of years. Second, it will deprive the Mexican water purchasers of the impartial forum guaranteed to them by diversity jurisdiction.

Even should the case be transferred to the State Court, the issue of whether this clearly unconstitutional condition

may be enforced will surface in this Court at some later date. It is only a matter of time.

Depriving the Mexican water purchasers of an impartial Federal forum guaranteed to them through diversity jurisdiction is a more serious matter. If ever diversity jurisidiction was needed, it is in Imperial county.

Imperial County is relatively small and extremely conservative. The County contains definite anti-Mexican elements who may express themselves in judicial elections. Witness the recent election of THOMAS METZGER, an avowed racist and leader of the Klu Klux Klan, as the Democratic nominee for the U.S. Congress in the 40th District, which includes Imperial County.

It is precisely this type of local pressure which diversity jurisdiction was designed to negate. *Moore's Federal Practice*, Section 0.71, p. 701.10 - 707.

The interpretation of 22 U.S.C. 2283 urged by the Petitioner would effectively defeat diversity jurisdiction of the Federal Courts wherever a State Court had issued any type of prior ruling in a related case, even where it was not on the constitutional issue presented. Such a result would defeat one of the primary purposes of an independent federal judiciary and should not be sanctioned by this Court.

Conclusion.

The County of Imperial has, through the use of a condition limiting water export, attempted to formulate and enforce its own foreign policy toward Mexico. Enforcement of this clearly unconstitutional condition was properly enjoined by the Federal District Court. There is no conflict between the judgment in the case at bar and the State Court Judgment. In fact, the California Courts are expressly waiting for a

decision by the Federal Courts concerning the constitutional issue. To overturn the injunction as requested by the County would deprive the Mexican water purchasers of an impartial federal forum guaranteed to them by diversity jurisdiction.

Respectfully submitted,

DAVID A. KAY,
DONALD C. MCDOUGAL, JR.,
Attorneys for Amicus
Donald C. McDougal.

EXHIBIT "A".

Fourth Appellate District, 4 CIV. 18915, Imperial County, Superior Court No. 43353.

Donald C. McDougal, Petitioner, v. Superior Court, Etc., County of Imperial, Respondent, County of Imperial, Real party in interest.

Donald C. McDougal, David A. Kay, 1010 Second Ave., Suite 2300, San Diego, Ca. 92101. James Harmon, County Counsel, Courthouse, El Centro, 92243.

1979, May 8. Filed petition for writ of Certiorari/Prohibition with stay pending review. #0275. $50.

June 5. Respondent and real party in interest are ordered to show cause before this court why the relief prayed for should not be granted. Written returns may be served and filed by respondent or real party in interest on or before June 15, 1979. Petitioner may reply by June 25, 1979.

This case is consolidated with case no. 4 Civil 18766 and case no. 4 Civil 18248 for oral argument to be held at 1350 Front St., Room 6010 State Building, San Diego, California at 1:30 p.m. on July 10, 1979.

Enforcement of the judgment of contempt entered on March 6, 1979, in case number 43353 is stayed until further order of this court.

June 15. Filed oppositon to petition by RPI.

June 25. Filed reply to opposition to petition.

July 10, 1979. Argued and Submitted.

July 19. The submission of the above matter is vacated, to await the finality of Munoz v. County of Imperial, U.S.D.C. #77-491-T, in the federal court.

EXHIBIT "B".

OCOTILLO-COYOTE WELLS GROUNDWATER QUANTITY-QUALITY STUDY IMPERIAL COUNTY, CALIFORNIA

By

Richard J. Zipp
Associate Engineering Geologist
Division of Planning and Research
State Water Resources Control Board

JUNE 1980

ABSTRACT

The study of the Ocotillo-Coyote Wells Groundwater Basin was conducted to determine the effect that current and/or future groundwater extractions would have on water quality and quantity in the basin. Historical water quality and level data combined with published reports on the area were reviewed. This information along with additional water levels and quality samples provided the data base for the study and conclusions reached.

The basin was found not to be in overdraft. Several localized pumping depressions have been generated in the major extraction areas. They are neither deep enough nor extensive enough at this time to cause a serious degradation of groundwater quality.

Minor degradation from shallow poor quality water was detected in several wells. The current beneficial uses should not be affected by this degradation. Dilution with the deeper waters will keep the quality well within limits.

INTRODUCTION

The Regional Water Quality Control Board, Colorado River Basin, at its January 23, 1980 Board meeting requested the State Water Resources Control Board to determine if a groundwater quality/quantity problem exists in the Coyote Wells Hydrologic Subunit (Figure 1).

The specific request asked the State Board to:

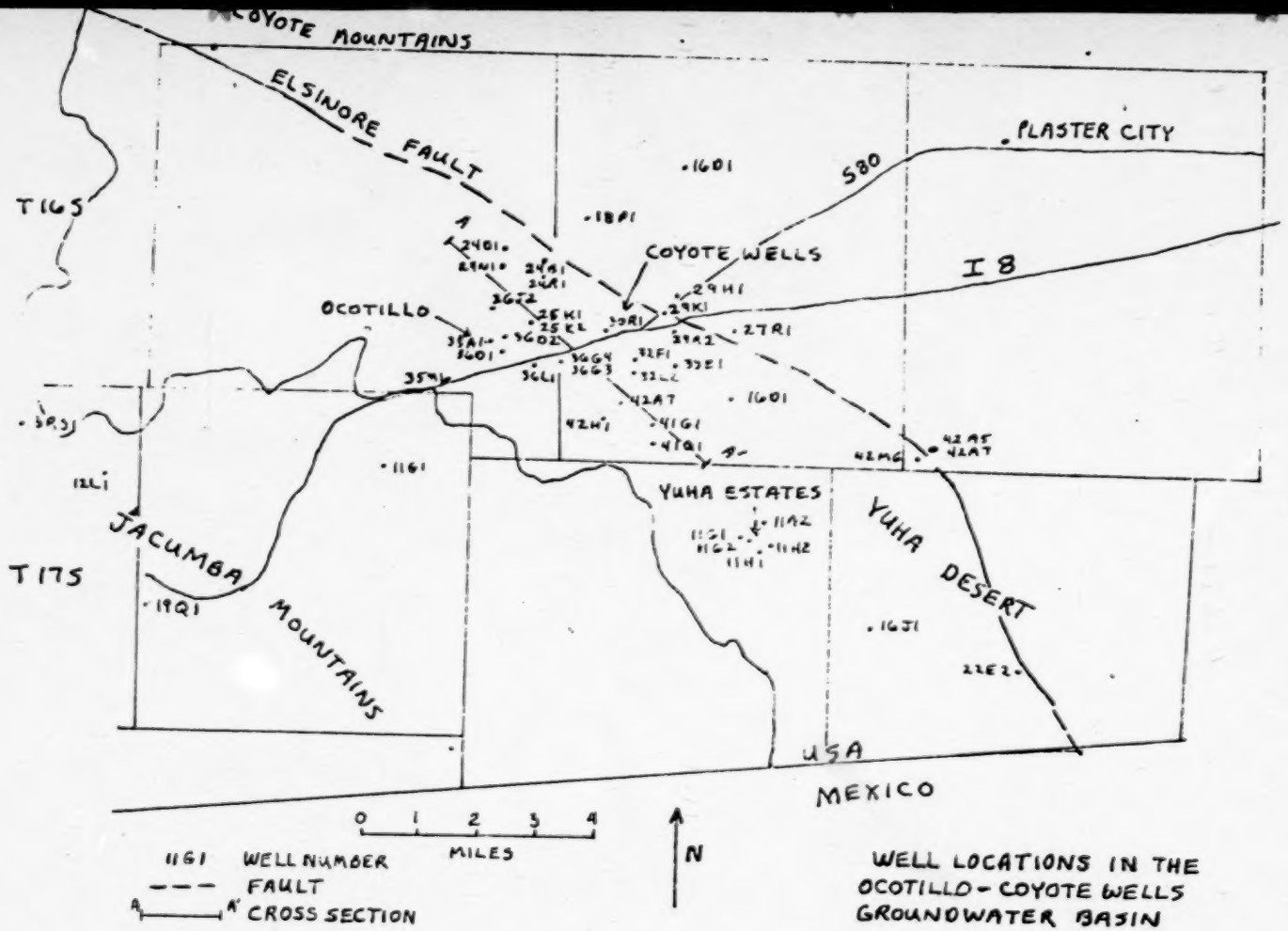
1. Investigate this water quality-quantity issue pursuant to Section 2100 of Division 2 of the California Water Code and take appropriate action such as filing a court action to restrict pumping or to impose physical solutions, or both, to the extent necessary.
2. Provide adequate funds for the construction and monitoring of five observation wells as recommended by

the U. S. Geological Survey (USGS) and the Department of Water Resources (DWR). The revised estimated total cost of construction of the five proposed wells is $200,000.* The total monitoring costs are estimated at $2,000* annually.

*Estimate presented in USGS/DWR November 26, 1979 letter to Regional Board 7.

3. Take other appropriate actions to resolve this water quality-quantity issue at the earliest possible date, in addition to the above-listed proposed actions.

The study was initiated in February 1980 and included the compilation of existing data from all sources plus collection of new water level and quality data. An analysis of the basic data in conjunction with the review of existing hydrologic reports provided the information necessary to make reasonable conclusions.



WELL LOCATIONS IN THE OCOTILLO - COYOTE WELLS GROUNDWATER BASIN

FIGURE 1

HYDROLOGY

The Ocotillo-Coyote Wells groundwater basin consists of one unconfined aquifer system. The groundwater flows in a south-easterly direction with some underflow across the Elsinore fault and the remaining underflow south across the Mexican border, a political rather than a physical boundary.

Skrivan (1977) estimated total storage in the upper 200 feet of saturated section at 640,000 ac-ft. DWR (Bull 118, 1975) using a section from 100-300 feet thick estimated storage at 1,700,000 ac-ft. The Division of Oil and Gas records show the base of freshwater at 515 feet in the southern portion of the basin (S22, T17S, R11E). This implies that a greater quantity is in storage. No calculation was made of the amount.

Aquifer characteristics in the basin were calibrated by Skrivan (1977). Transmissivity values ranged from 20 to 10,000 feet squared per day (approximately 100-70,000 gal/day/ft.) Transmissivity is the rate water passes through a material. The values calibrated by Skrivan are not unrealistic for the geology present.

The storage coefficients were also calibrated by Skrivan's model. To fit the imput parameters the coefficients ranged from .04 to .08, which seems low for the materials present. The storage coefficient is the ratio of percent water volume a material yields due to gravity to the total volume of material.

Huntley (1979) on the other hand cites Loetz and others (1975) who measured a range from .35 to .41. These values appear much too high. Based on materials described in well logs, a compromise value of .15 is probably a more realistic figure.

Reasonable estimates for both the transmissivity and storage coefficient allow an evaluation to be made of changes

taking place in the basin. In the case of the Ocotillo-Coyote Wells basin, the aquifer dewatering in the cones of depression amounts to about 100 acre-feet of water. This estimate is based on the dewatering caused by a single well pumping the entire amount of water extracted in the basin in 1975. The assumptions made were:

Transmissivity	=	1,000 ft/day (10,000 gal/day/ft
Storage Coefficient	=	0.15
Well Yield	=	550 gallons/minute
Time Pumped	=	365 days

Considering that the actual wells are not pumping continuously and are scattered around the basin, the net effect of withdrawal in any area will be minimal and possibly less than that calculated.

PUMPAGE

Groundwater extraction in 1975 has been estimated at 800 acre-feet (Table 1). This figure has not been updated since the Skrivan report was released. Approximately 90 percent of the pumpage occurred in the Ocotillo-Coyote Wells area. There does not appear to have been a significant change in the extraction within the basin since then.

Table 1 1975 Groundwater Pumpage

	Pumpage (ac-ft)	% Total
U. S. Gypsum	600	68.2
McDougall	120	13.6
Mutual Water Companies	100	11.4
Domestic Use	60	6.8
	880	100.0

It is necessary to note that over 80 percent of the pumpage is exported from the basin. This figure is based upon different boundaries than the political basin boundaries which are currently accepted. The northern and eastern edges should be redefined to terminate the basin at the Elsinore fault as the water east of the fault is generally of an unusable quality.

With this new definition of the basin, all extractions by U.S. Gypsum must be considered as exports, because the water is taken across the fault into the poor quality, unusable area. Any percolation of process water east of the fault should not be considered recharge to the Ocotillo-Coyote Wells basin.

There has never been any question that the water trucked to Mexico is not an export. No further discussion of this water export is necessary.

The remaining pumpage is confined to the basin. This pumpage consists of the domestic well and mutual water company extractions. Some portion of this water is returned to the basin through recharge of septic tank effluent and percolation of excess irrigation water.

WATER LEVELS

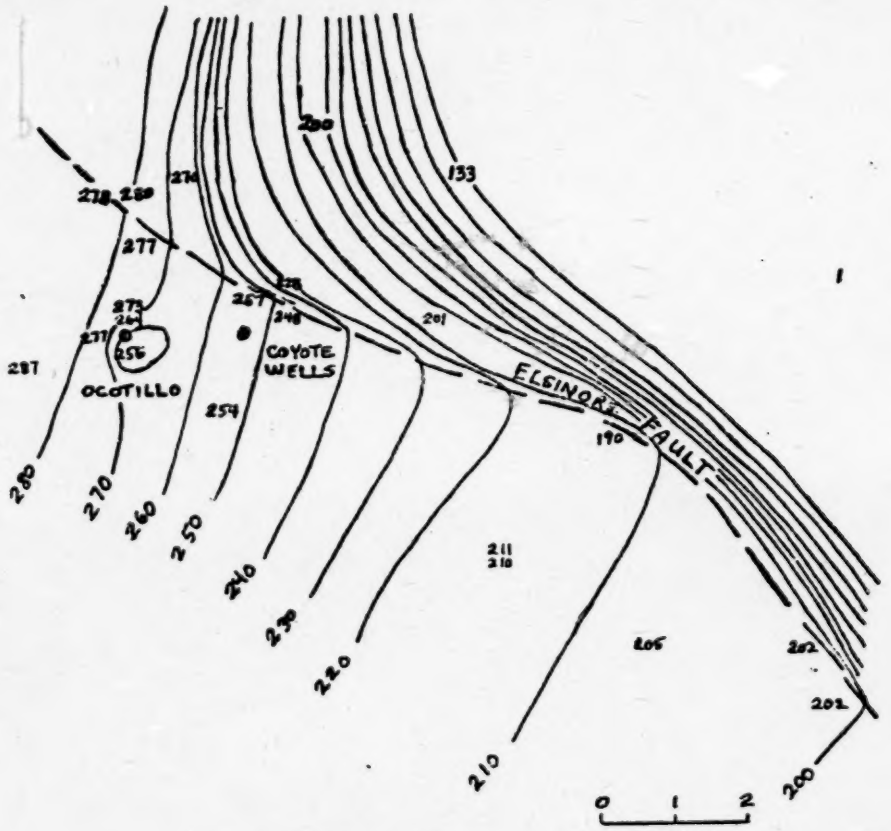
Basin groundwater levels have remained essentially at the same elevation between 1975 and May, 1980 (Figure 2, 3, and 4). The exceptions to this are the pumping cones near Ocotillo, Coyote Wells, and the Yuha Estates areas.

Comparison of the annual high water level data indicates that over half of the wells show a five year change of less than one foot plus or minus the 1975 level (Figure 5). Of the wells showing a water table lowering greater than one foot, all wells except one are in the area of the above mentioned pumping cones. The one exception is east of the Elsinore fault and its fluctuation cannot be accounted for.

The annual high water level was selected because it represents the change in storage in the aquifer. This level is least affected by seasonal fluctuations caused by pumping and evapo-transpiration. Since level measurements are only made semi-annually, the water level measured probably is not the seasonal high but should be close enough for reasonable analysis.

Water elevation contour maps show higher water levels on the west side of the Elsinore fault when compared to the east side Figure 2, 3, 4). This water level difference decreases northwesterly along the fault to an area where the levels are the same about one and one half miles north of Coyote Wells. At a point two miles north of Ocotillo, the USGS measurements indicate the poor quality water surface east of the fault is 1.7 feet higher in well 165/9E-24B1 than in well 165/9E-24D1 on the west side.*

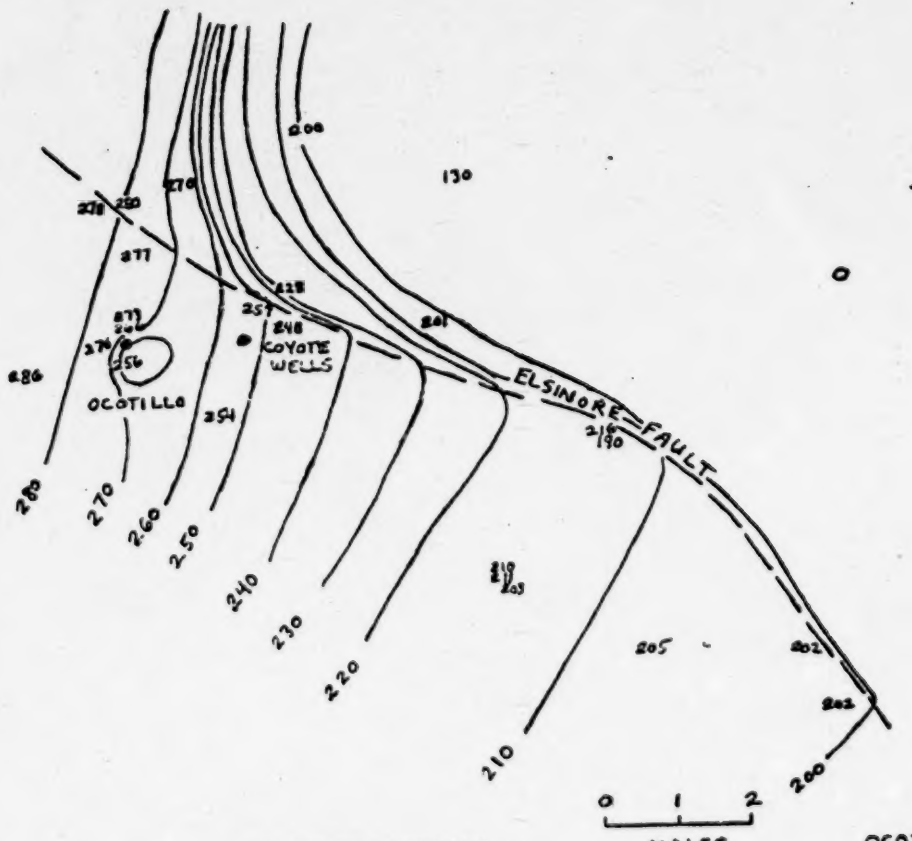
*A word of caution is necessary when looking at the USGS water levels. Some of the well surface elevations were estimated from topographic maps with twenty or forty foot contour intervals. This method for determining elevations could easily result in errors amounting to several feet, which might significantly alter the interpretation of the water level data. If greater accuracy is desired, well elevations should be surveyed in as soon as possible.



210 WATER ELEVATION
--- FAULT
CONTOUR INTERVAL 10 FEET

OCOTILLO-COYOTE WELLS
GROUND WATER ELEVATIONS
1975-1976

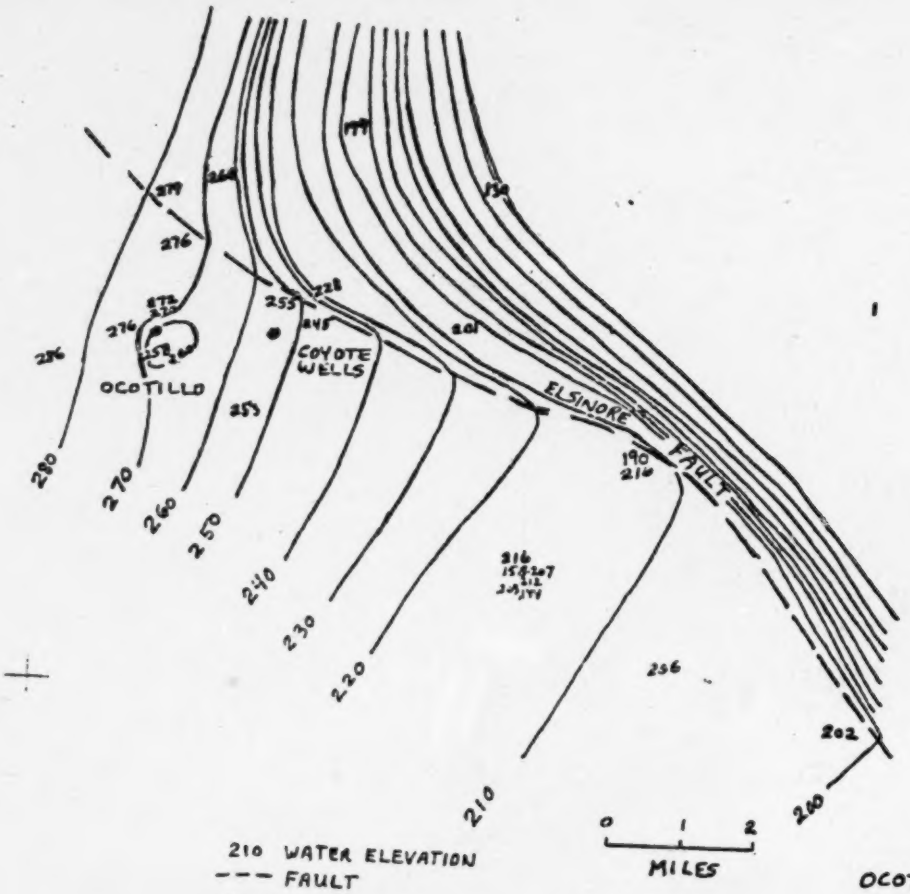
Figure 2.



210 WATER ELEVATION
--- FAULT
CONTOUR INTERVAL 10 FEET

OCOTILLO-COYOTE WELLS
GROUND WATER ELEVATIONS
1977-1978

Figure 3.



OCOTILLO-COYOTE WELLS
GROUND WATER ELEVATIONS
MAY 1980

Figure 4.

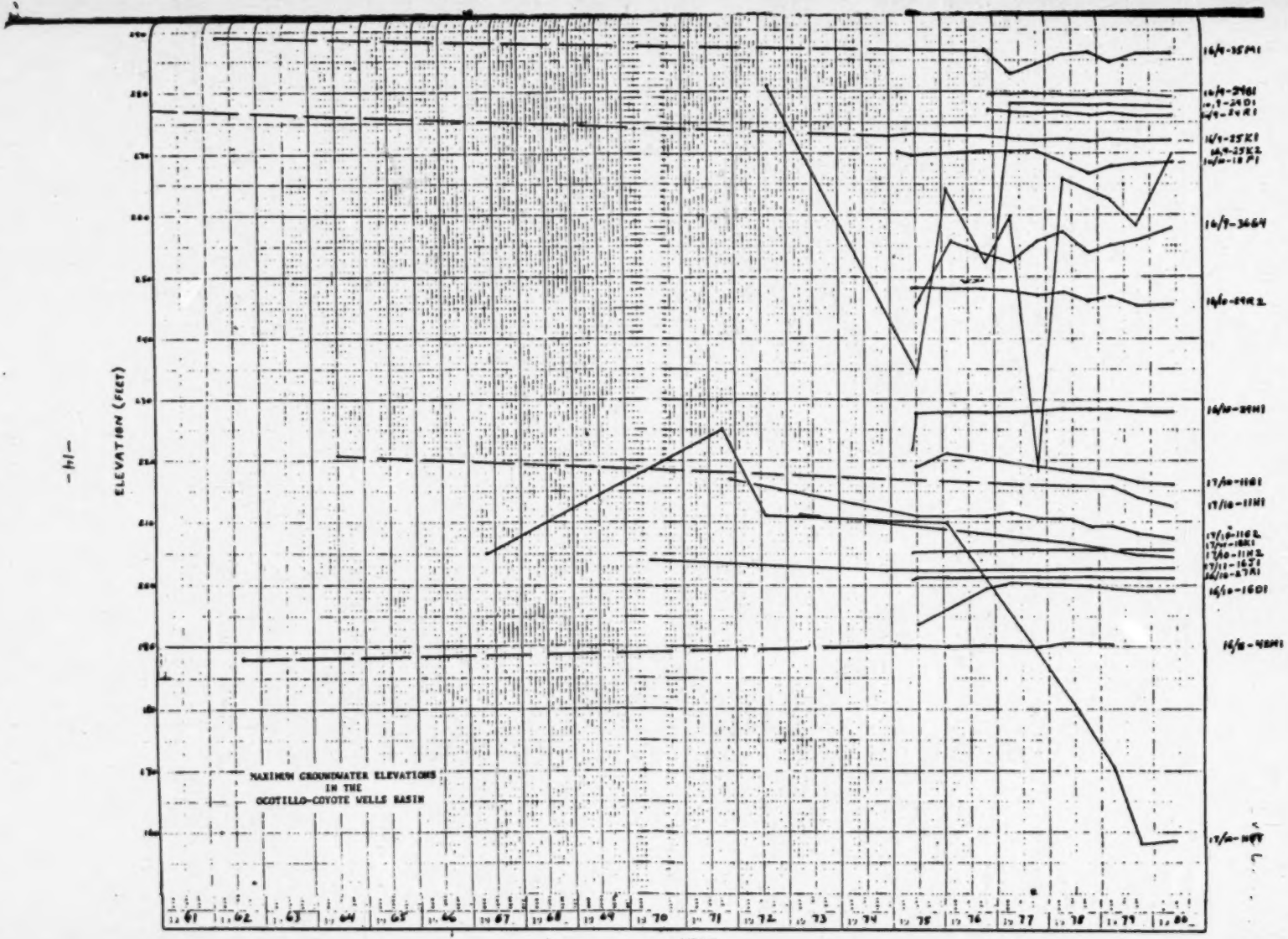

ELEVATION (FEET)
YEAR
MAXIMUM GROUNDWATER ELEVATIONS
IN THE
OCOTILLO-COYOTE WELLS BASIN
16/9-35M1
16/9-24R1
16/9-25K1
16/9-36G4
16/10-19M1
17/10-11G1
17/10-11H1
16/10-16D1
16/8-4BM1

FIGURE 5.

WATER QUALITY

The basin contains three distinct water quality types which are present in layers. There is a shallow sodium-chloride (Na-Cl) water, the main sodium-bicarbonate (Na-HCO_3) aquifer water, and the deep sodium-sulfate Na-SO_4) water. The latter is similar to the water type east of the Elsinore Fault. The three water types are kept separate by the lack of mixing in the basin. There do not appear to be any aquicludes in the aquifer system.

The shallow Na-Cl water was identified in several old dug wells (Skriven, 1977) and also can be seen on the water quality cross-section (Figure 7). Since this water type was found as early as 1925, prior to most development, it can be assumed to be naturally ocurring. Possibly the high salt content is the result of evaporation at the water table concentrating the salt content in the remaining water.

The intermediate water, the main aquifer in the basin, is an excellent quality water. It is suitable for all uses with no undesirable constituents, other than sporadic fluoride. The source and distribution of the fluoride could not be determined from the data available.

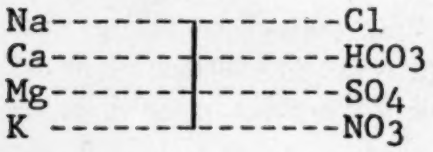
The deep poor quality water is assumed to underlie most of the main aquifer for two reasons. First, its existence was confirmed in an old gas exploration well in the southern portion of the basin. The base of freshwater was called at a depth of 515 feet below ground surface. Second, the geology at depth is probably marine containing unflushed connates. None of the water quality analyses reflect the deep water quality.

The water quality in the basin has been characterized using Stiff diagrams. The Stiff diagram is a graphical representation of chemical water analysis. Through the use of these diagrams, general water types can be determined and anomalies easily detected.

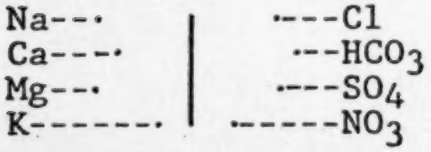
Basically, the technique utilizes the equivalents per million (epm) values for the major cations and anions in a chemical analysis. Although not restricted to these ions, sodium (Na), calcium (Ca), magnesium (Mg), and potassium (K) are the cations used and chloride (Cl), bicarbonate (HCO_3), sulfate (SO_4), and nitrate (NO_3) are the anions used in this study.

The epm for these ions are plotted from a zero reference line (Figure 6a). These plots are then joined together to form the Stiff diagram (Figures 6b and 6c).

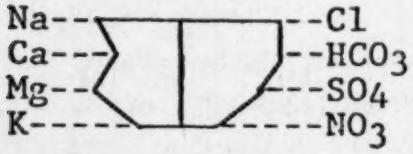
6a

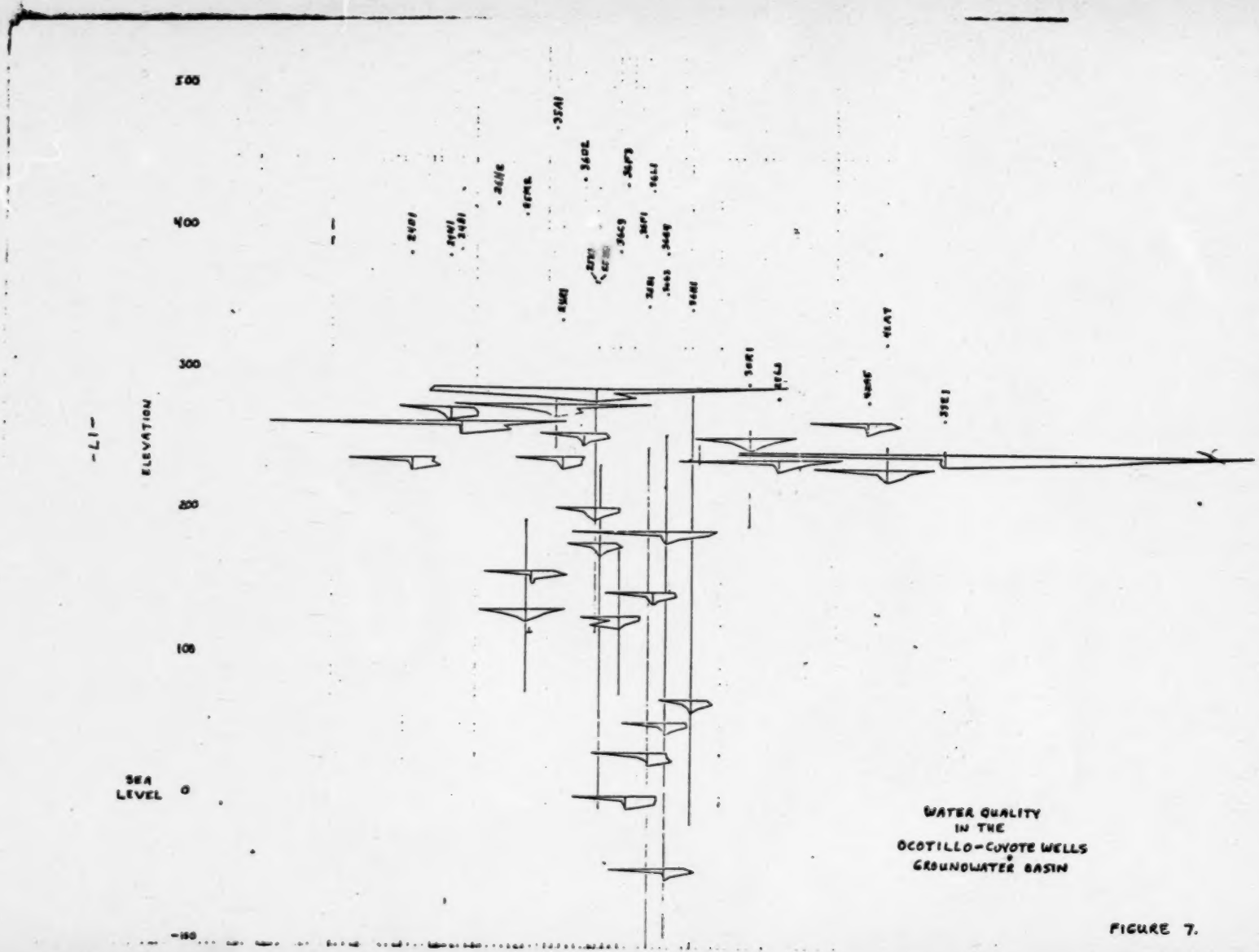


6b



6c





WATER QUALITY
IN THE
OCOTILLO-COYOTE WELLS
GROUNDWATER BASIN

FIGURE 7.

PROPOSED GROUNDWATER MONITORING NETWORKS

The USGS and DWR (letter of November 26, 1979) selected five locations for the placement of monitoring wells. These well locations do not consider the likelihood that degradation, if it occurs, will probably be from sources North of the Ocotillo-Coyote Wells area. Considering the new quality and level data, the proposed network should be reevaluated. No funding should be made until there is agreement on well locations, well design, and sequence of well construction.

CONCLUSIONS

1. Initiation of Section 2100 action at this time is inappropriate.
2. The basin is not in a critical overdraft condition.
3. Cones of depression in the Ocotillo, Coyote Wells, and Yuha Estates areas have resulted in well interference.
4. The proposed well locations for the USGS-DWR monitoring network are not adequately sited based on new information obtained in this study.
5. The Elsinore fault should constitute the eastern boundary for the groundwater basin.
6. The U.S. Gypsum Co. and the McDougall wells export over 80 percent of the total basin pumpage.
7. Groundwater quality in the basin has not been significantly degraded.
8. The effect of above average precipitation in the watershed during the last few years could not be determined with the existing data collection program.
9. Hydrographs do not show the effects of recharge from precipitation.

10. Additional export of water from the areas affected by well interference will only intensify the problem.

11. Deepening of the pumping cones may induce poor quality water upward from the deeper zones.

12. Base of fresh water is at approximately a minus 500 feet below ground surface level in the southern portion of the basin.

13. Water levels in the basin, with the exception of the interference pumping cones, have changed less than one foot during the last five years of record.

14. The lack of surveyed well elevations may effect the analysis of the water level data to some extent.

RECOMMENDATIONS

1. Do not initiate Section 2100 action at this time.
2. Continue existing water quality and level monitoring.
3. Reevaluate the proposed USGS-DWR monitoring well ocations.
4. Fund an appropriate share for the construction of monitoring wells.
5. Survey in elevations of all water level monitoring wells.
6. Reevaluate boundaries of the Ocotillo-Coyote Wells groundwater basin using geologic rather than political factors.
7. Reevaluate the effect of the U.S. Gypsum water export from the basin on possible water rights litigations.
8. Look into options to redistribute pumpage away from pumping cones of depression.
9. Restrict additional pumpage in areas showing significant well interference.

EXHIBIT "C".

Reunion de la Comision
de las Californias

COMMISSION OF THE CALIFORNIAS
ENVIRONMENTAL COMMITTEE
CABO SAN LUCAS
APRIL 23, 24, 25, 1980
BAJA, CALIFORNIA SUR

RESOLUTION

WHEREAS, at the meeting in La Paz in April 1979, a Resolution was passed indicating support for the continued distribution of potable water to the City of Mexicali from Imperial County wells.

WHEREAS, there is now pending before the U.S. Supreme Court the issue as to whether this distribution may continue.

WHEREAS, due to the importance to the community of Mexicali for the continued availability of potable water, the Commission of the Californias requests that proper attention, and if necessary, legal intervention by appropriate Federal authorities in this action be taken.

THEREFORE BE IT RESOLVED, that the Environmental Committee of the Commission of the Californias, after thorough discussion and evaluation, requests the unanimous agreement of the General Assembly of the Commission that appropriate communication be generated through the offices of the respective chiefs of delegation of the Commission of the Californias to the Secretary of State of the United States.

BE IT FURTHER RESOLVED, that this Commission recognizes the importance of the availability of potable water to the City of Mexicali. To this purpose the Committee

requests, if necessary, the intervention of the office of the Secretary of State of the United States in support of an action pending in the United States Supreme Court (Case No. 79-1003) relative to the right of the Mexican Nationals to purchase water in the United States for use in the community of Mexicali.

(Passed April 25, 1980 by unanimous vote of the commission.)

abril de 1980.

EXHIBIT "D".

In the Supreme Court of the United States.

County of Imperial and the Supreme Court of California in and for the County of Imperial, Petitioners, vs. Guillermo Gallego Munoz, Humberto Martinez, Juan De Leon, Respondents. Case No. 79-1003, Stipulation to Filing of Amicus Brief.

Received: Mar. 17, 1980.

Pursuant to the revised rules of the Supreme Court of the United States Rule Number 422), it is hereby stipulated between the parties that DONALD C. McDOUGAL, a Defendant in the above-entitled action, may file an Amicus Curiae Brief in the above-entitled case notwithstanding the fact that he is not a party to the present appeal.

DATED: April 8, 1980.

/s/ James H. Harmon
James H. Harmon, County Counsel
for Petitioner, County of Imperial
and the Superior Court of California
for the County of Imperial

DATED: 4-22-80

/ s/ W. H. Kronberger
William H. Kronberger, Attorney for
Respondents Guillermo Gallego Munoz,
Humberto Martinez & Juan De Leon.